



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

Application of: ALAN R. SHEALY

Group Art Unit: 3629

Serial No.: 09/828,579

Examiner: I. Borissov

Filed: April 2, 2001

Our Customer ID: 22827

For: BUSINESS SUPPORT AND CONTROL
SYSTEM AND METHOD

Our Account No.: 04-1403

Attorney Ref.: SSM-11.2

Sir:

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision dated ____ of the Examiner twice/finally rejecting claims ____
2. ☐ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).

4. ☒ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).

5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.

6. **FEE CALCULATION:**

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Fees

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If box 3 above is X'd enter \$1,000.00

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(5 months \$2,160)

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- ☒ Fee NOT required since paid in prior appeal in which the Board of Appeals did not
render a decision on the merits.

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paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter
to this application and the resulting official document under Rule 20, or credit any overpayment, to our
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Date: December 19, 2005

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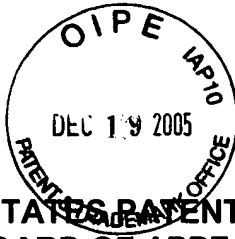
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ATTORNEY DOCKET NO.: SSM-11.2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES**

In re Application of: Alan R. Shealy)	Examiner: Igor N. Borissov
)	
Serial No.: 09/828,579)	Group Art Unit: 3629
)	
Filed: April 2, 2001)	Our Customer ID: 22827
)	
Confirmation No.: 6598)	Our Account No.: 04-1403
)	
For: Business Support and Control System)	
And Method)	

Ex Parte REPLY BRIEF Pursuant to 37 C.F.R. §41.41

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Post Office Box 1450
Alexandria, VA 22313-1450

Honorable Commissioner:

In response to the Examiner's Answer communications received from the Examiner and mailed on October 20, 2005 with regard to the above-referenced application, Applicant hereby submits this Reply Brief. Notice of Appeal was filed on August 9, 2004. The APPEAL BRIEF (together with Section viii: CLAIMS APPENDIX) in accordance with 37 CFR § 41.37 as well as the requisite fee for the Appeal Brief as set forth in 37 CFR § 41.20(b)(2) was filed January 10, 2005.

RESPONSE TO NEW ISSUES RAISED IN THE EXAMINER'S ANSWER IN HIS
RESPONSE TO ARGUMENTS

Groups I and II.

Appellants note with appreciation the withdrawal of the rejections of claims 11-15 under 35 U.S.C. §112, second paragraph and the withdrawal of the rejections of claims 6-10 under 35 U.S.C. §101.

Group III. Claim Rejections Under 35 U.S.C. §102(e)
 regarding Claims 1,6,8,11, and 19.

In response to the Examiner's assertion that Ehler explicitly teaches a billing system by pointing to Ehler at column 23, lines 24-28, Appellants strongly disagree with the Examiner's characterization of Ehler as teaching a billing system. The material in Ehler's specification cited in support of the Examiner's position describes a system that may include a communications channel. Ehler simply states that:

The communications channel also may be used to update the debit account balance for an energy supplier based on payments by the occupant or bill payer.

Appellants would urge that the text here really only indicates that Ehler's system may have an automatic debit feature that may extract funds from an account that may be paid into by an individual. Appellants remain of the opinion that Ehler does not disclose a billing system as specifically called for in each of the independent claims. There simply is no disclosure in Ehler that he sends out a "bill" in any conventional sense of the word, but rather merely may deduct from a pre-paid account value corresponding to the value of any energy used.

Appellants believe that a more likely extrapolation of the brief amount of information given by Ehler would suggest to those of ordinary skill in the relevant art that should the debit account balance go to zero, so would the energy supply go to zero, that is, the supply would be cut off as opposed to causing a bill to be generated to cover a deficit in the pre-paid account.

In response to the Examiner's assertion that Ehler explicitly teaches future rate changes: The Examiner points to column 23, lines 28-38 and specifically to the text stating, in part:

If the energy unit supplier projects a future oversold condition based on future usage predictions, the supplier may be able to prearrange for additional energy units from other suppliers or brokers or will have the ability to raise the price of the energy. An energy price increase may result in a communication to all potential purchasers of the energy units for upcoming time periods that a price change has occurred, causing the individual premise systems to re-compute their economic models and either remain committed

to the provider and the new price per energy unit, curtail usage or switch to another energy unit provider.

Respectfully, the passage quoted by the Examiner only indicates that purchasers are informed that “for upcoming time periods that a price change has occurred ...” Appellants urge that this concept is completely different from the specifically claimed concept of identifying that a future rate plan is to be changed, as opposed to “has occurred.” Moreover, the claimed concept of “selecting the future rate plan” at least suggests that there is more than one possibility from which to “select.” The portion of Ehler cited by the Examiner reflects only that the potential purchaser is informed of the single price plan structure and that is “has occurred.”

Group IV. Claim rejections Under 35 U.S.C. §103(a),
regarding Claims 2-5, 7-8, 10, 12-13, 15, 17-18 and 20.

In response to the Examiner’s assertion that Ehler provides motivation to modify Ehler to suggest a certain plan at column 21, lines 14-15: Respectfully, Ehler states in the noted lines, in fact, starting with line 11 that:

The system would use its historical usage data to project future energy demand and produce economic models to obtain the maximum benefit for the occupant or utility bill payer and the utility.

While one of ordinary skill in the art might conclude from this statement that there is some small suggestion to offer variations in Ehler’s disclosure, the issue is does the

statement, or any other statements within the four corners of Ehler's disclosure suggest to those of ordinary skill in the art that the specifically claimed features be implemented. For example, claims 2, 7, 12, and 17 variously call for "determining whether the future rate change is a single plan change." Appellants respectfully suggest that noting in the brief portion of Ehler's disclosure cited by the Examiner or any other portion of Ehler's disclosure makes any suggestion as to this particular concept.

In addition neither the specifically recited portion of Ehler's disclosure nor any other portion thereof provides any suggestion of the specifically claimed concept in claims 3, 8, 13, and 18 of verifying consistency of a future rate plan with an old rate plan.

While those of ordinary skill in the art may well be motivated by general comments within Ehler's disclosure to make certain modifications based on general knowledge or even based on suggestions within the original disclosure, where very specific modifications are called for by very specific claim limitations, those specifically recited features must be shown to be "obvious" within the scope of the existing interpretations of the Statutes, Rules and prevailing Case Law. The motivation suggested by the Examiner "to suggest a certain plan would be to allow utility providers to attract customers to more profitable plan thereby obtaining maximum benefit for the utility bill payer and the utility" may well motivate someone to make changes in Ehler's disclosed configuration, but, respectfully, it would not motivate one, except through the hindsight benefit of Appellants disclosure, to make the specific changes called for in the noted claim limitations.

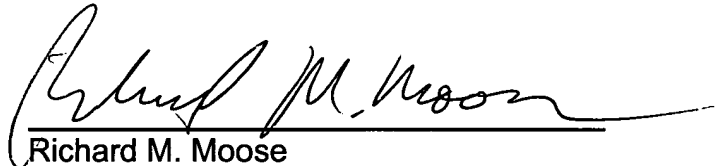
CONCLUSION :

In view of the foregoing, Appellants respectfully submits that present claims 1 through 20, clearly meet all requirements of 35 U.S.C. Sections 101 and 112, and clearly and patentably define over the applied Ehlers et al. reference, within the meaning of 35 U.S.C. Sections 102 and 103, wherefore reversal of the grounds of rejection stated in the subject February 10, 2004 Final Rejection, is requested.

Respectfully submitted,

DORITY & MANNING,
ATTORNEYS AT LAW, P.A.

December 19, 2005
Date



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